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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1943.

CROWN CAN COMPANY,
Petitioner,
vs.
NATIONAL LABOR RELATIONS BOARD,
Respondent.

No. 552

PETITION FOR WRIT OF CERTIORARI

To the United States Circuit Court of Appeals
for the Eighth Circuit

and

BRIEF FOR PETITIONER.

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N. W. HARTMAN,
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INDEX.

Page

Petition for writ of certiorari 1-7

Reasons for allowing the writ 6

Brief of petitioner 9-16

Cases Cited.

Bussman Mfg. Co. v. National Labor Relations Board, 111 Fed. (2d) 783, l. c. 787 10

International Assn. B. S. O. I. W. v. Pauly Jail Building Co., 118 Fed. (2d) 615, 314 U. S. 639, 86 L. Ed. 513 15

National Labor Relations Board v. Dahlstrom Metallic Door Co., 112 Fed. (2d) 756 ..... 13, 14

National Labor Relations Board v. Fansteel Metallurgical Corp., 306 U. S. 240, 83 L. Ed. 627 16

National Labor Relations Board v. P. Lorillard Co., 117 Fed. (2d) 921, 314 U. S. 512, 86 L. Ed. 380 16

National Labor Relations Board v. Remington Rand, 94 Fed. (2d) 862, 868, certiorari denied 304 U. S. 576, 82 L. Ed. 154 ..... 13, 14

National Labor Relations Board v. Somerset Shoe Co., 111 Fed. (2d) 681 14

National Labor Relations Board v. William Tehel Bottling Company, 129 Fed. (2d) 250 ..... 5, 6, 14

National Licorice Co. v. National Labor Relations Board, 309 U. S. 350, 84 L. Ed. 799 16

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PETITION FOR WRIT OF CERTIORARI

To the United States Circuit Court of Appeals for the Eighth Circuit.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States of America:

The petition of Crown Can Company for writ of certiorari, directed to the United States Circuit Court of Appeals for the Eighth Circuit, to bring before the Supreme Court the case of National Labor Relations Board, Petitioner, v. Crown Can Company, Respondent.

The said petitioner respectfully shows to the Court as follows:

I.

That this proceeding determines finally for the petitioner, Crown Can Company, the charges of unfair labor practice as determined by the National Labor Relations Board, even though there was no substantial evidence supporting the Board's findings. In fact, it is shown in

the transcript of record in appendix in support of brief of Crown Can Company, respondent, record page 19, page 20, page 23, page 24, page 25, page 26, that it is the contention of this petitioner that the United States Circuit Court of Appeals for the Eighth Circuit, in its decision, did not give due consideration to the rule which has been previously laid down as to the meaning of the substantial evidence rule as applicable to proceedings had before the National Labor Relations Board.

II.

That petitioner, in the operation of its plant at Nebraska City, Nebraska, is not required to bargain with any representative of any appropriate bargaining unit until the representative of such unit presents convincing proof of such majority support. The facts in the present case showed that a representative of the Union wrote the manager (Superintendent of the Crown Can Company plant at Nebraska City) for a conference; that such letter was sent by registered mail, that it was received by the superintendent, and the record further shows that there was no reply made to such letter. The superintendent who received this letter was transferred to the Company's Orlando, Florida, plant and turned the letter over to his successor at Nebraska City and more than a month elapsed before such successor superintendent turned over the letter in question to the management of the Company at its home office in Philadelphia. Before the home office had any opportunity to contact the labor organizer, charges had already been filed before the National Labor Relations Board charging this Company with violation of Sections 8 (1), (3) and (5) and Sections 2 (6) and (7) of the National Labor Relations Act. The record further shows that the labor organizer who sent the letter to the plant superintendent never called on anyone in connection with the Crown Can Company for the purpose

of bargaining nor did anyone else connected with the Union. It is the Company's contention that the failure of the superintendent to reply immediately to the letter sent by the labor organizer could under no circumstances be a violation of the National Labor Relations Act on the question of refusal to bargain. It is further the contention of this petitioner that there is no substantial evidence supporting the Board's petition for enforcement, but that there is no evidence in the record wherein the United States Circuit Court of Appeals for the Eighth Circuit concluded in its opinion that this petitioner was guilty of the charge relating to refusal to bargain.

III.

The Crown Can Company is a Pennsylvania corporation which operates a plant in Nebraska City, Nebraska, and is there engaged in the manufacture, sale and distribution of cans. At the time of the trial of the cause, there were eight or nine employees of the Company. The unfair labor practices charged in the complaint are that on or about November 30, 1940, the Company, by its officers, agents and employees, terminated the employment of Gordon Armstrong, Ralph Nelson and Henry Jens, because of their activity in behalf of the Union, and that on or about December 7, 1940, the Company, by its officers, agents and employees, terminated the employment of Cecil Hasty because of his membership and activity in behalf of the Union, and that since such aforementioned dates the Company has failed and refused to reinstate said employees. The further unfair labor practice alleged in the complaint is that the Company since October 14, 1940, refused and still refuses to bargain collectively with the Union as a representative of the employees in the unit made up of all production and maintenance employees in the Nebraska City, Nebraska, plant of the Crown Can Company. The complaint further alleged that the repre-

sentatives of the Company questioned employees about union membership, made prejudicial remarks to and about individual union members, threatened to close the plant if employees continued membership in the union and tried to induce employees through promises of wage increases not to join or continue their membership in the Union. Hearing was had in this cause in Nebraska City, Nebraska, beginning on March 24, 1942, and after all parties had had an opportunity to present testimony, the trial examiner found that the Company was guilty of discharging Gordon Armstrong without just cause and ordered him to be taken back and made whole. The other three men, Ralph Nelson, Henry Jens and Cecil Hasty, were not ordered to be returned to the employ of the Company nor was the Company ordered to pay back wages for these three discharged employees. The Board affirmed the trial examiner's report and the decision of the United States Circuit Court of Appeals on petition for enforcement of an order of the National Labor Relations Board, approved the previous findings and decision of the trial examiner and the Board. As this Court can well realize, since there was a small number of employees working for the Company at this plant, all of the employees at the time of the hearing were put on the witness stand and all of said employees, eight or nine in number, testified that the Company or any of the management in a suvervisory capacity, were not guilty of any of the charges as alleged in the complaint. Such testimony was completely ignored by the administrative body as well as the United States Circuit Court of Appeals for the Eighth Circuit in that this Court held that there was substantial evidence supporting the findings of the Board. In so stating in its opinion, the United States Circuit Court of Appeals for the Eighth Circuit must have determined and found that the testimony of these eight or nine witnesses which were all of the employees of the Company, did not come under

the category of substantial evidence, but that one witness by name of Gordon Armstrong, who testified for the Board and was contradicted by all of the witnesses who testified for the Company, gave the only substantial testimony. In fact, the trial examiner and the Board and the United States Circuit Court of Appeals for the Eighth Circuit went so far in stating that they could not believe the testimony of the eight or nine witnesses but that the one witness by the name of Gordon Armstrong was the one to believe and therefore such evidence was substantial and supported the findings of the National Labor Relations Board. It is the contention of this petitioner in this cause, the Crown Can Company, that the United States Circuit Court of Appeals for the Eighth Circuit never gave proper and due consideration to what is substantial evidence as applied to a petition for an order of enforcement of the National Labor Relations Board. As to the other contention which this petitioner makes, that the United States Circuit Court of Appeals was in error by finding the Crown Can Company remiss in its duty to bargain collectively, the Company feels that not only is such finding not supported by convincing evidence of majority support, but that the United States Circuit Court of Appeals for the Eighth Circuit has applied one of its decisions in a related case which case is not in point on all fours. The case that is referred to is the case of National Labor Relations Board v. William Tehel Bottling Company, 129 Fed. (2d) 250. In fact the United States Circuit Court of Appeals in the present case admitted in its opinion "that an employer may request reasonable proof that the union represents a majority of the employees and in the absence of such proof he need not bargain if he in good faith doubts the union majority." In the present case there was no proof ever submitted by anyone connected with any union organization that they represented a majority, and under those facts it is the

contention of the Company that the Union has failed to present convincing proof that it represents a majority and therefore the Company is under no duty under any provision of the National Labor Relations Act to bargain.

All of said questions were duly raised and argued by counsel for your petitioner in the Circuit Court of Appeals.

IV.

Your petitioner respectfully submits that a writ of certiorari should be allowed herein for the following two reasons:

1. Because the United States Court of Appeals for the Eighth Circuit has failed to properly interpret the meaning of the term "substantial evidence" as defined by this Court in its application to hearings and decisions under the National Labor Relations Act.

2. Because the Court has erred and been misled in its own interpretation of a previous decision in the case of National Labor Relations Board v. William Tehel Bottling Company, 129 Fed. (2d) 250, and the application of such decision to the present case wherein a labor union would not be required to furnish any proof that it represents a majority before an employer would have to bargain with such representative.

Because the petitioner feels aggrieved by the decision of said Circuit Court of Appeals for the Eighth Circuit in the matters and things aforesaid, your petitioner respectfully prays that a writ of certiorari be issued out of this court directed to the United States Circuit Court of Appeals for the Eighth Circuit, commanding that Court to certify and send to this Court on a day certain to be therein designated, a full and complete transcript of the records and proceedings had in said Circuit Court in the cause entitled National Labor Relations Board, Petitioner, v. Crown Can

Company, Respondent, No. 12,547, September Term, A. D. 1943, and to the end that said cause may be reviewed and determined by this Court and the judgment of said Circuit Court of Appeals be reversed and for such proceedings therein as to this honorable Court may seem just and proper.

CROWN CAN COMPANY,

W. R. MAYNE,
N. W. HARTMAN,
Counsel for Petitioner.

Of Counsel:

FORDYCE, WHITE, MAYNE, WILLIAMS & HARTMAN,
506 Olive St., St. Louis, Mo.

State of Missouri, }
City of St. Louis. } ss.

N. W. Hartman, being duly sworn, says that he is one of the counsel for the petitioner in the foregoing petition for writ of certiorari and that he has read the foregoing petition and the same is true to his own knowledge; that his knowledge is derived from the records of this case and that the case is one in which the prayer of the petitioner should be granted by this honorable Court.

N. W. Hartman.

Subscribed and sworn to before me this 15th day of December, A. D. 1943.

Marie Lang,
Notary Public.

(Seal)

My commission expires November 25, 1947.